

**Request for Proposals
for
SAND COMPATIBILITY AND
OPPORTUNISTIC USE PROGRAM
(SCOUP)**

PROPOSALS DUE:

4 p.m.

July 30, 2004



401 B Street, Suite 800 • San Diego, CA 92101-4231 • (619) 699-1900

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As of July 1, 2004

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- A. Standard Agreement for Services
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Request for Proposals for SAND COMPATIBILITY AND OPPORTUNISTIC USE PROGRAM (SCOUP)

I. INTRODUCTION

Thank you for your interest in contracting opportunities with SANDAG. The San Diego Association of Governments (SANDAG) is seeking proposals from qualified firms for professional services to conduct a Sand Compatibility and Opportunistic Use Program (SCOUP).

This Request for Proposals (RFP) describes the project, the required scope of services, the consultant selection process, and the minimum information that must be included in the proposal.

Failure to submit information in accordance with the RFP requirements and procedures may be cause for disqualification.

II. BACKGROUND

SANDAG is the regional agency as well as the technical and informational resource for the area's 18 incorporated cities and the county government, who collectively are the "Association of Governments." Through this Association, local governments work together to solve current problems and plan for the future. SANDAG builds consensus, makes strategic plans, obtains and allocates resources, and provides information on a broad range of topics pertinent to the San Diego region's quality of life.

SANDAG is governed by a board of directors composed of mayors, councilmembers, and a county supervisor from each of the region's 19 local governments. Current members include all the incorporated cities in the region – Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solana Beach, and Vista – and the County of San Diego.

Supplementing the voting members are advisory representatives from Imperial County, the California Department of Transportation (Caltrans), the Metropolitan Transit System, the North San Diego County Transit Development Board, the U.S. Department of Defense, the San Diego Unified Port District, the San Diego County Water Authority, and Baja California.

SANDAG's monthly board meetings provide the public forum and decision point for significant regional issues such as growth, transportation, environmental management, housing, open space,

air quality, energy, fiscal management, economic development, and criminal justice. SANDAG's Directors adopt plans, allocate transportation funds, establish policies, and develop programs for these regional issues which are used by local governments as well as other public and private organizations. Citizens, special interest groups, and other agencies are involved in the planning and approval process by participating in SANDAG's working groups and task forces as well as attending workshops and public hearings.

III. PROJECT SUMMARY

A. Project Background

SANDAG is administering this contract for the California Department of Boating and Waterways and the California Sediment Management Workgroup (CSMW). The CSMW is developing a California Coastal Sediment Management Master Plan (Sediment Master Plan) of which the SCOUP will be an important part. Information about the CSMW and the Sediment Master Plan can be reviewed at www.dbw.ca.gov/csmw.htm.

The contract will be administered by SANDAG and coordinated with SANDAG's Shoreline Preservation Committee, the CSMW, and the Department of Boating and Waterways. The CSMW Project Manager will be directly involved in Project oversight and direction.

B. Brief Project Description

This Project will provide protocols and templates for a generic regional opportunistic sand program for California based on an application to the Oceanside littoral cell in the San Diego region, and prepare environmental documentation sufficient to successfully obtain permits. Actual permitting is not part of the project.

C. Fee Estimate Range

The estimated fee range for the completion of the project is \$75,000 to \$95,000. This project is included in SANDAG's annual Overall Work Program and Program Budget.

D. Payment

The selected consultant will be paid by the following method: fixed fee.

IV. SCOPE OF REQUIRED SERVICES

A. Project Description

The State of California Resources Agency and the U.S. Army Corps of Engineers are heading a joint state / federal initiative to develop a California Coastal Sediment Management Master Plan (Sediment Master Plan). A state / federal coordinating group, the Coastal Sediment Management Workgroup (CSMW), composed of a number of state and federal agencies with coastal management responsibilities is guiding the work. The CSMW is chaired by the State Resources Agency and the Corps. More information on the CSMW's membership, activities and on the Sediment Master Plan can be found at www.dbw.ca.gov/csmw.htm.

One of the goals of the CSMW's Sediment Master Plan and related studies is to develop a process that facilitates management of sand on a regional (i.e., littoral cell) basis. This will require: 1) establishing a process for use of materials with less-than-optimum sand-sized material; 2) an acceptable method of characterizing beach and source sands for compatibility; 3) identifying potential economically-feasible source areas; 4) locations of appropriate receiver sites and, if appropriate, storage sites; 5) appropriate placement techniques; 6) CEQA / NEPA compliance (budget does not assume preparation of an Environmental Impact Report/ Environmental Impact Statement EIR/EIS), and; 7) permitting with local governments and a number of regulatory agencies. It is the intent of this project to address all of the above issues; however, obtaining permits will not be a part of the work.

To provide guidance for statewide applications, the consultant will assist CSMW and SANDAG in the development of a generic regional opportunistic sand program, including acceptable protocols consistent with regulations and templates for establishing compatibility of potential sources and receiver beaches and the use of less than optimum source sands. The generic templates and sand program will be developed and used in the Oceanside littoral cell, to determine whether additional steps are needed and to assess how quickly and easily they can be applied to real-world conditions. The results will be used by the CSMW in the development of the Sediment Master Plan's Implementation Strategy.

Developing this program will require compiling existing information from related Opportunistic Beach Fill programs being carried out by BEACON, the City of Carlsbad and the City of San Clemente, and information and data on the San Diego region coastal zone from a number of sources. SANDAG's Project Manager and the selected consultants will work closely with the CSMW Sediment Master Plan Project Manager, and with Kim Sterrett of the Department of Boating and Waterways, who will serve as the point of contact for the CSMW Steering and Advisory Committee. The SANDAG Project Manager and the selected consultants will also coordinate the work with SANDAG's Shoreline Preservation Committee, including at least two presentations to the Committee.

The program should:

1. Establish testing protocol and criteria for compatibility of source and receiver beaches.
2. Identify a streamlined process that will facilitate the use of source sands with less than 80% beach-sized geologic materials.
3. Develop guidance for establishing potential sources of sediment, and identify as many potential sources of sediment as possible within a reasonable distance of the littoral cell.
4. Develop guidance for establishing potential receiver sites, and identify a potential receiving beach in the southern portion of the Oceanside Littoral Cell.
5. Review and analyze various placement techniques for land, inland aquatic and marine sources of sediment, and identify placement techniques for receiver site(s).
6. Determine regulatory agency authority and needed permits.
7. Prepare CEQA / NEPA compliance documents, though the scope and budget does not assume preparation of an EIR/EIS.
8. Coordinate with the CSMW's GIS Analyst to identify data collection and presentation protocols such that the information collected during this project can be incorporated into the Sediment Master Plan's GIS.

Task 1:

Develop protocols for statewide applications to facilitate the characterization of and comparison between potential receiver sites and sources of nourishment sands in order to establish compatibility. The Opportunistic Beach Fill Programs cited above have expanded on existing beach fill guidelines that could be used as a reference for this project. The protocols should be developed in conjunction with input and comment from the USEPA, USACE, California Coastal Commission, and State and Regional Water Quality Control Boards. Things to be considered or addressed as part of the template include:

1. Three-dimensional sampling of potential source and receiver sites, standardized across jurisdictional districts.
2. Consistency in sampling requirements between source and receiver sites.
3. Characterization of receiver locations (offshore, nearshore, beach and inland locations; multiple sample depths).
4. Appropriateness of combining offshore, nearshore and beach grain samples to develop a composite characterization of the receiver site sediments.
5. Chemical testing if contamination is suspected. The City of Carlsbad's program has developed a checklist to determine the potential for contaminants in the sediment,

which can also be used as a reference to establish appropriate testing protocols and guidelines for the regional effort. The contaminated Sediment Task Force should also be consulted for relevant guidance and checklists.

6. Testing/survey for invasive species such as *Caulerpa* when appropriate.
7. Obtaining seasonal perspectives. Since receiving beaches can change, the testing protocol and guidelines should recommend the frequency at which receiving beaches should be tested to determine the range of material suitable for application to specific beaches.
8. Collecting samples randomly or systematically over large areas to be dredged will probably be acceptable to determine sand compositions for compatibility analyses.
9. Blending materials from two separate geographic areas (i.e., river channels and harbor backwaters) to increase the volume of material for beach nourishment will likely be disapproved.
10. Providing information on normal coastal sediment input cycles from watersheds, cliffs, and other sources to help decision makers understand the sediment "context" for a particular opportunistic sand project or program.

Task 2:

Using the type, style, and amount of information developed by the Santa Cruz Harbormaster and the Cities of San Clemente and Carlsbad Opportunistic Beach Fill Programs as guidance, develop a template to define conditions adequately that will allow use of geologic materials that contain between 50-80% sand sized particles for replenishment of sandy beaches. Beach nourishment materials with greater than 80% sands are likely to be accepted by USEPA without additional studies to assess potential impact from fine-grained materials contained within the source sands, except that very large volumes may require some assessment as to potential impacts from a sheer volume of materials perspective. The template should be developed in conjunction with USEPA, USACE, California Coastal Commission, and State and Regional Water Quality Control Boards' input and comment. Things to be considered as part of the template include:

1. The template is meant to focus and help streamline the permitting process by identifying up front and early the issues that need to be addressed as part of the permitting process.
2. A comprehensive list of elements should be developed, allowing those relevant to the project area to be "checked off". Checklist examples include project size, harbor entrance, near river, project type, time of year, resources in area, etc.
3. Different checklists would be appropriate, dependant on gross size of project. For example, small projects would not require as much background information as would large projects.

4. The template would provide for a focus on the main point(s) of concern, and promote collection of data to address that concern.
5. Level of required monitoring plan would be based on or dependent on marine resources present in project vicinity.
6. Sediment movement patterns need to be identified. If such information is not already available, monitoring to obtain such data would be appropriate.
7. Where concerns over the impacts that beach nourishment projects may have on visual feeders (i.e. birds, fish), mitigation strategies should be considered to address those concerns.
8. To what degree is dredged material already being used for beach nourishment?

Task 3:

A survey of all potential opportunistic sources within an approximate 20 mile radius of the Oceanside Littoral Cell shall be performed. Possible sources include, but are not necessarily limited to, harbors, offshore sand, debris basins, coastal wetlands restorations, highway improvements, construction sites, dam desiltation projects, landslide remediations, and other types of excavations. Identification of potential sources should address the feasibility of transporting such material to the beach, and assessing the best possible method for transporting the material to the beach with attention to monetary, social, and environmental considerations such as traffic, noise, community disruption, air pollution, and cost.

There are a number of potential receiving beaches along the southern end of the Oceanside littoral cell. Each of these sites should be analyzed for access points, proximity to sensitive resources, down coast benefits, impacts to infrastructure associated with transporting sediments to those beaches, and impacts to recreation. Receiving beaches should be screened for constraints and sites should be prioritized possibly with temporal screening for sites that have seasonal environmental or recreational constraints. When feasible, specific sources should be constrained to specific receiving beaches to reduce costs associated with transporting the material as well as sediment testing costs. The most optimum receiver beaches will be identified along with selection criteria used to evaluate the sites. Backup locations and seasonal alternatives should also be determined as appropriate.

Placement techniques could vary for the various receiving beaches. Placement of sediment directly in the surf zone can be a benign and feasible placement option, and recreation impacts are minimized, as disturbance to the beach is very short term. Introduction of sediment into the littoral cell benefits all beaches down coast from the receiving beach but does not necessarily benefit a specific beach. Placement at the back of the beach may have potential for temporary storage. Placement options should be established to realize the maximum benefit from this program.

The assessment should also contain information regarding costs associated with placing the potential source sands on the beaches. For example, a large amount of potential beach

sediment is handled as part of routine desilting operations. This material currently is not taken to the beach but to the nearest feasible disposal site. Funding sources should be identified that would augment existing programs in order to haul the material to the beach for a small additional cost as opposed to the nearest land based disposal site.

Using the testing protocols and guidelines developed under Tasks 1 and 2 above determine the range of tests necessary and the placement options that are possible for each source and receiver combination. Develop recommendations on how to conduct the characterization in advance so that when opportunistic material becomes available, sediment testing will be limited to the source only. Research and discuss the feasibility of establishing temporary stockpile areas that could be used to store appropriate beach materials if needed prior to their movement to the receiver beaches.

Based on the findings of this effort, develop a draft generic plan for statewide application that identifies necessary components for a regional opportunistic sand program. Finalize the plan based on comments received from the Shoreline Preservation Committee and the CSMW Project Manager and Advisory Committee.

Task 4:

Develop a proposed Project Description for CEQA / NEPA that formulates an opportunistic beach fill program for the Oceanside littoral cell area in San Diego County. The Project Description should include all elements required by the CEQA / NEPA process, including the receiver beaches, truck or alternate transportation routes, placement quantities and seasons, material characteristics, placement configurations, etc. This task should also identify potential issue areas that would be addressed in the environmental documentation.

Task 5:

Once the compatibility and characterization templates have been developed and the conceptual program for regional opportunistic sand reuse in the Oceanside littoral cell has been developed, California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) compliance can be initiated. The San Diego Regional Beach Restoration Project environmental document should be used to the maximum extent feasible as it contains the majority of the information necessary to develop this program. The CEQA / NEPA process will allow for public comment on the program. Many local, state, and federal regulatory agencies will have jurisdiction over this program. Developing the program with their concerns in mind will greatly facilitate the permitting process.

Deliverables:

1. Sand Compatibility testing protocols.
2. Template for use of less-than-optimum source sands.
3. Lists of sediment sources, receiver beaches and potential temporary stockpile areas for the Oceanside Littoral cell.
4. Appropriate placement techniques for receiver sites.

5. Draft and final plans for an generic opportunistic sand program, based on findings from the Oceanside Littoral cell.
6. Proposed Project Description for the Oceanside Opportunistic Sand Program.
7. CEQA / NEPA document.

B. Project Schedule

SANDAG has established the following tentative milestones for the project:

Task	Deliverable(s)	Months After Notice to Proceed
1	1	1
2	2	2
3	3,4,5	4
4	6	5
5	7	6

The Consultant is to provide, as part of its proposal, a proposed project schedule.

V. PROPOSAL REQUIREMENTS

A. General

1. The proposal should be concise, well organized and demonstrate the proposer's qualifications and experience applicable to the project. The proposal shall be limited to 45 one-sided pages (8.5 inches x 11 inches), inclusive of resumes, graphics, forms, pictures, photographs, dividers, front and back covers, cover letter, etc., but not of letters of commitment from subcontractors or DBE documentation. Type size and margins for text pages should be in keeping with accepted standard formats for desktop publishing and processing and should result in no more than five hundred (500) words per page.
2. The written proposal must include a discussion of the proposer's approach to the project, a breakdown and explanation of project tasks, a proposed project schedule, an estimate of costs, and documentation of the firm and consultant's qualifications for the scope of work.
3. The proposer will be evaluated based upon the information submitted in accordance with Section VI, Subsection B, the evaluation criteria in Section X, and compliance with all requirements of this RFP.

B. Contents

Proposals submitted in response to this RFP shall be in the following order and shall include:

1. *Executive Summary*

Include a 1-2 page overview of the entire proposal describing the most important elements of the proposal.

2. *Identification of the Proposer and Establishment of Proposer's Fiscal Responsibility*

Please provide the following information:

- a. Legal name and address of proposer's company.
- b. Number of years proposer's company has been in business.
- c. Legal form of company (partnership, corporation, joint venture, etc.). If joint venture, identify the members of the joint venture and provide all information required within this section for each member. If a corporation, certify that the corporation is in good standing with the Secretary of State.
- d. If company is wholly-owned subsidiary of a "parent company," provide the legal name and form of the parent company.
- e. Address(es) of office(s) that will work on this project.
- f. If DBE certified, identify certifying agency, as well as gender and ethnicity.
- g. Name, title, address, e-mail address, and telephone number of the person to contact concerning the proposal.
- h. State whether the proposer has filed bankruptcy in the last ten (10) years and provide any other relevant information concerning whether the proposer is financially capable of completing this project.
- i. Provide all license numbers for licenses relevant to or required for this project, the names of the holders of those licenses, and the names of the agencies issuing those licenses.

3. *Experience and Technical Competence*

Describe the proposer's experience in completing similar consulting efforts. List three (3) successfully completed projects of a similar nature. For each completed project, provide the name of the company and project manager the proposer performed work for, telephone numbers, type of work performed, and dollar value of the contracts. A project currently being performed may be submitted for consideration as one of the references.

4. *Proposed Method to Accomplish the Work*

Describe the proposer's technical and management approach to the project and how the proposer will plan for and accommodate each into the project effort. Provide a proposed project schedule. Discuss how and what lines of communication will be implemented to maintain the project schedule.

5. *Knowledge and Understanding of Local Environment and Relevant Laws*

Describe the proposer's experience working in the statewide local environment and proposed local presence for interfacing with SANDAG's Project Manager and staff. The environment includes, but is not limited to: cities, county, and other local agencies' regulations and policies; local environmental documentation requirements; geo-technical documentation requirements; geo-technical conditions in the project area; local building codes; and other local design criteria. Describe proposer's experience with and knowledge of relevant state and federal laws.

6. *Project Organization and Key Personnel*

- a. Describe proposed project organization, including identification and responsibilities of key personnel. Indicate role and responsibility of prime consultants and all subconsultants, including DBE subconsultants. If applicable, indicate how local firms are being utilized to ensure a strong understanding of state and local laws, ordinances, regulations, policies, requirements, and permitting. Indicate the extent of the commitment of key personnel for the duration of the project and furnish resumes of key personnel. Provide an indication of the staffing level for the project. SANDAG's evaluation of the proposal will consider the proposer's entire team; therefore, no changes in the team composition will be allowed without prior written approval of SANDAG. Subconsultant letters of commitment are required.
- b. Describe the experience of the proposer's project team in detail, including the team's project manager, and other key staff members, on projects of similar size, capacity, and dollar value. For each similar project, include the client's name and telephone number. It is SANDAG's policy to interview proposers' references.

7. *SANDAG's Disadvantaged Business Enterprise (DBE) Program and Discrimination Policy*

- a. Proposers are urged to obtain disadvantaged business enterprise (DBE) participation on this project, although there is no specific project goal for DBE participation. It is SANDAG policy to provide disadvantaged, minority, and women-owned business enterprises, as defined in Part 26, Title 49 CFR, an equitable opportunity to participate in all contracting opportunities. SANDAG's DBE Program, which includes minority and women-owned business enterprises, is designed to administer contracts, consultant selection, and all related procurement activities without regard to race, color, religion, disability, political beliefs, age, national origin, gender, or cultural background. Accordingly, no firm or individual shall be denied the opportunity to compete for SANDAG contracts

by reasons so stated or implied. A copy of SANDAG's DBE Program is available on SANDAG's Web site at www.sandag.org/notices.

- b. SANDAG requires all potential SANDAG consultants to comply with Title VI and Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, and the California Fair Employment and Housing Act, as amended, and all other applicable discrimination laws. SANDAG will not tolerate illegal discrimination or harassment by its consultants.
- c. Describe the proposer's overall plan to make contracting opportunities available to all interested and qualified firms. This includes a strategy to identify the available subcontracting resources and a willingness to make subcontracting opportunities available to such firms.
- d. Submit a subconsultant list, Attachment B, which lists all subconsultants for this project, DBE status (if applicable), scope of work, and approximate percentage of the work (as a percentage of the total award to the prime consultant). In accordance with current federal regulations, DBEs and joint ventures involving DBEs must be certified for eligibility by Caltrans, by other qualified Department of Transportation recipients or by other certifying public agencies. Documentation verifying DBE status must be submitted in the proposal for all firms (prime consultant or subconsultant) claiming such status.

8. *Previous Contracts with SANDAG*

The proposer shall submit a list which indicates all prime contracts and/or amendments awarded to the proposer by SANDAG for the last three (3) years. The list shall include a short description of the project, the project scope of work, award date, completion date, name of SANDAG's assigned project manager, and contract value.

9. *Exceptions to this Request for Proposals*

The proposer shall certify whether it takes no exception(s) to this RFP, including but not limited to SANDAG's Standard Agreement for Services (Attachment A). If the proposer does take exception(s) to any portion of the RFP or contract, the specific portion to which exception(s) is taken must be identified and explained. Failure to make exceptions to the RFP or contract will be deemed a waiver of any objection. Exceptions may be considered during the proposal evaluation process.

10. *Addenda to this Request for Proposals*

The proposer shall confirm in its proposal the receipt of all addenda issued to this RFP.

11. *Certifications*

As part of the proposal package, proposers must submit the following signed certifications:

- a. Certifications on Lobbying (Exhibit E to Attachment A, the Standard Agreement for Services)

- b. Certifications Regarding Debarment, Suspension and Other Responsibility Matters (Exhibit F to Attachment A, the Standard Agreement for Services)

12. *Statement of Impartiality*

The nature of this project requires an impartial unbiased approach on the part of the consultant team. This proposal shall include a statement declaring that the consultants and subconsultants are not currently, and will not, during the performance of these services, participate in any other similar work involving a third party with interests currently in conflict or likely to be in conflict with SANDAG's interests.

13. *Detailed Cost Estimate*

Provide an estimate of the total direct and indirect costs to complete all tasks identified in the scope of work. A detailed cost breakdown shall be provided identifying: 1) the number of staff hours and hourly rates for each professional and administrative staff person who will be committed to this project, including fringe and overhead costs; 2) an estimate of all other direct costs, such as materials and reproduction costs; and 3) an estimate of subconsultant services, if needed.

VI. SUBMITTAL REQUIREMENTS

- A. 12 copies of the proposal shall be submitted. Proposals submitted by facsimile or e-mail are not acceptable and will not be considered.
- B. The proposal and any required certifications shall be signed by an individual or individuals authorized to execute legal documents on behalf of the proposer.
- C. The proposal must be addressed to and received no later than 4 p.m., local time, on July 30, 2004, at the office of:

Erlinda Avena, Contracts and Purchasing Specialist III
SANDAG
San Diego Association of Governments
401 B Street, Suite 800
San Diego, California 92101
ear@sandag.org
(619) 699-1984

Postmarks will not be accepted in lieu of this requirement.

- D. Proposals are to be submitted in sealed packages with the following information clearly marked on the outside of each package:
 - 1. Name of proposer
 - 2. Project title
 - 3. Package Number (e.g., 1 of , 2 of)

- E.** Failure to comply with the requirements of the RFP may result in disqualification. SANDAG is not responsible for finding, correcting, or seeking clarification regarding ambiguities or errors in proposals. If a proposal is found to contain ambiguities or errors, it may receive a lower score during the evaluation process. SANDAG reserves the right to disqualify a proposal detailed cost estimate with mathematical or clerical errors, inconsistencies or missing information which prevent SANDAG from fully evaluating the proposal. SANDAG may, but is not required to, seek clarification from a proposer regarding information in a proposal. Errors and ambiguities in proposals will be interpreted in favor of SANDAG.
- F.** Proposals and/or modifications received subsequent to the hour and date specified above will not be considered.

VII. PRE-SUBMITTAL ACTIVITIES

A. Questions Concerning Request for Proposals

All questions relating to the RFP must be received in writing via mail, facsimile, e-mail, or hand delivery no later than 4 p.m., on July 23, 2004, addressed to:

Rob Rundle, Project Manager
SANDAG
401 B Street, Suite 800
San Diego, California 92101
E-mail: rru@sandag.org

A Web page will be developed, maintained, and devoted to this RFP. It can be accessed from www.sandag.org/rfps.

Responses to all questions received concerning this RFP will be posted on the Web page devoted to this project (shown above) on an on-going basis. All responses and all timely questions received concerning this RFP will be posted at least three (3) days prior to the proposal due date or can be obtained by contacting the SANDAG project manager at 619-699-6949. It is the responsibility of proposers to check the Web page for questions and responses related to this RFP.

B. Revision to the Request for Proposals

SANDAG reserves the right to revise the RFP prior to the date that proposals are due. Revisions to the RFP shall be posted on the Web page devoted to this RFP at least one full business day prior to the deadline for proposals. It is the responsibility of the proposer to check the Web site for any revisions related to this RFP.

VIII. CONSULTANT EVALUATION AND SELECTION PROCESS

- A.** SANDAG will establish one or more consultant evaluation committee(s) ("Committee(s)") for this project and will include representatives from SANDAG, the CSMW and its Project Manager, and, when deemed in SANDAG's best interest, representatives of its member agencies, the general public, or individuals with experience and expertise in the related discipline(s).
- B.** Based upon the proposals submitted, the Committee may select a short-list of qualified firms for this project. SANDAG reserves the right to make final consultant selection based solely upon evaluation of the written proposals, without short-listing firms or conducting oral interviews, should it find it to be in its best interest to do so. The Committee(s) may interview the short-listed firms. Based upon the written proposal, interview, and reference scores, and other appropriate evaluation factors, the Committee(s) will rank the qualified finalists.
- C.** The Committee(s) will recommend the top-ranked proposer to SANDAG's Executive Director, and will request authority to enter into negotiations with the selected firm. The Executive Director has final authority for selection. The proposer selected for negotiations will be sent a Notice of Intent to Award. Proposers who are not selected for negotiations will be sent a Notice of Intent to Enter Negotiations With Another Proposer.
- D.** Upon receipt of the Executive Director's authorization to negotiate, the SANDAG Project Manager will establish a negotiating team and enter into negotiations with the selected firm. The negotiations may cover: scope of work, contract schedule, contract terms and conditions, technical specifications, level of effort, and price. If the negotiating team is unable to reach an acceptable agreement with the selected firm, the negotiating team will recommend to the Executive Director that negotiations be terminated and that negotiations with the second ranked firm be initiated. The Executive Director has final authority to terminate negotiations and begin negotiations with another proposer.
- E.** After negotiation of a proposed agreement that is fair and reasonable, the negotiating team will recommend to the Executive Director that SANDAG enter into the proposed agreement. Final authority to approve the agreement rests with the Executive Director.

IX. EVALUATION CRITERIA

Proposers will be evaluated on the following criteria according to the weights assigned below. SANDAG reserves the right to add the proposers' interview scores into the evaluation criteria or to select proposers based solely upon their written proposal or oral interview.

Proposers' detailed cost estimates and/or a determination of which proposal offers the best value to SANDAG will be part of the evaluation process. Cost may be the deciding factor if there is no clearly superior candidate.

Proposers will be evaluated on the following criteria according to the weights assigned below.

A. Project Experience [25 Points]

Qualified consultants will have a variety of experience in performing similar studies with public, government, private, not-for-profit, and other agencies as specified in Section VI. B. 3 of this RFP. SANDAG's inability to obtain positive feedback on a proposer during reference-checks or to confirm a proposer's history of financial responsibility may reduce that proposer's score in this category.

B. Proposed Methodology and Approach to Work [25 Points]

Proposers must demonstrate the ability to carry out the project by meeting the proposal requirements identified in Sections IV, V, and VI of the RFP. High quality, clear, and complete proposals showing proposer's understanding of the Project and willingness to comply with standard contract requirements will receive higher scores in this category. While proposers are required to meet the goals and deadlines for the project as described in this RFP, proposers may receive higher scores in this category if they demonstrate innovative, advanced and/or well-thought-out methodologies that SANDAG may not have specifically identified in this RFP.

C. Cost or Best Value [25 Points]

Proposals will be evaluated for providing the best methodology and services at the lowest cost and with the least amount of risk.

D. Staff Qualifications [25 Points]

Project staff qualifications include a combination of experience, education, and background in management sciences, industrial engineering, and organizational development.

X. SCHEDULE FOR NOMINATION, SELECTION, AND AWARD

SANDAG anticipates the process for nominating and selecting a consultant, and awarding the contract will be according to the following tentative schedule:

A. Advertise and Issue RFP	July 6, 2004
B. Last Day to Submit Questions Regarding RFP	July 23, 2004
C. Proposal Due Date	July 30, 2004
D. Conduct Oral Interviews (If Necessary)	August 9, 2004
E. Selection and Notification of Intent to Award	August 16, 2004
F. Contract Negotiations Complete	September 1, 2004
G. Approval of Contract	September 13, 2004
H. Notice of Award/Notice to Proceed	September 17, 2004

XI. SPECIAL CONDITIONS

A. Reservations

This RFP does not commit SANDAG to award a contract, to defray any costs incurred in the preparation of a proposal pursuant to this RFP, or to procure or contract for work. SANDAG may reject bids without providing the reason(s) underlying the declination. A failure to award a contract to the lowest bidder will not result in a cause of action against SANDAG.

B. Public Records

All proposals submitted in response to this RFP become the property of SANDAG and public records and, as such, may be subject to public review.

C. Right to Cancel

SANDAG reserves the right to cancel or revise, for any or no reason, in part or in its entirety, this RFP. If SANDAG cancels the RFP prior to the deadline for proposals or revises the RFP, notification will be placed on SANDAG's Web site.

D. Additional Information

SANDAG reserves the right to request additional information and/or clarification from any or all proposers to this RFP, but is under no obligation to do so.

E. Conflict of Interest

SANDAG has established a policy concerning potential conflict of interest in program management, design, and construction. This policy applies to all proposers and their proposed consultants/subconsultants. See Standard Agreement for Services (Attachment A) for additional information and required certifications by consultants and their subconsultants.

F. Public Information

Consultants who wish to release information to the public regarding consultant selection, contract award or data provided by SANDAG must receive prior written approval from SANDAG before disclosing such information to the public.

G. Contract for Services

The selected consultants will be required to sign a customized version of the attached "Standard Agreement for Services" (Attachment A) and to provide the insurance certificates and all other required documentation within fifteen (15) calendar days of issuance of the Notice of Intent to Award.

H. Insurance Requirements

SANDAG requires consultants doing business with it to obtain insurance, as shown in the Standard Agreement for Services. The required insurance certificates must comply with all requirements of the standards as shown in the contract and must be provided within fifteen (15) days of issuance of the Notice of Intent to Award and prior to the commencement of any work on the project.

XII. PROTESTS

Pursuant to the requirements set forth in FTA Circular 4220.1E, "Third Party Contracting Requirements," the following procedures shall be used by SANDAG to fairly and promptly respond to any protests received regarding third party contracts or the contracting process.

SANDAG will consider all protests or objections regarding the contracting process or the award of a contract submitted by 4:00 p.m. on the deadlines discussed below. SANDAG will only review protests submitted by an actual or prospective proposer or someone else whose direct economic interest would be affected by the award of a contract or by failure to award a contract. A protest by any adversely affected person must be made in writing and must be mailed or hand delivered to SANDAG. A protest which does not strictly comply with SANDAG's protest procedures will be rejected.

Protests relating to the content of the RFP package must be filed within ten (10) business days after the date the RFP is made available to the public by SANDAG. Protests relating to the intent to make an award solicited by an RFP must be filed within ten (10) business days after the Notice of Intent to Enter Into Negotiations With Another Proposer is issued to the proposers. The date of filing shall be the date of receipt of protests by SANDAG. Untimely protests will be rejected.

If deemed necessary, SANDAG shall notify all proposers of record that a protest has been filed and that the award has been postponed until further notice. If necessary, proposers will be asked to extend the time for acceptance of their proposal in order to avoid the need for readvertisement of the solicitation.

A. Protest Contents

A letter of protest must set forth detailed grounds for the protest and be fully supported with technical data, documentary evidence, names of witnesses, and other pertinent information related to the subject being protested. The protest must also state the law, rule, regulation, or practice on which the protest is based. The protestor must demonstrate or establish a clear violation of a specific law or regulation, e.g., a violation of the Buy America requirements.

If the protestor considers that the protest contains proprietary material which should be withheld, a statement advising of this fact must be affixed to the front page of the protest document, and alleged proprietary information shall be so identified wherever it appears.

Protests shall be addressed to:

Office of General Counsel
SANDAG
401 B Street, Suite 800
San Diego, California 92101

B. Reply to Protest

A SANDAG Protest Committee appointed by the Executive Director will review all protests in a timely manner and reply to the protest, in writing, within ten (10) business days. All material submitted by the protestor will be considered. Such material will not be withheld from any interested party outside of SANDAG or any agency which may be involved with the contract except to the extent that the withholding of information is permitted or required by law or regulation.

C. Request for Protest Reconsideration

Upon receipt of an adverse decision by SANDAG, the protestor may file a request for protest reconsideration. A request for protest reconsideration must be directed to the Executive Director in writing and received within ten (10) full business days from the postmark date of the reply from SANDAG. The Executive Director will respond to the request for protest reconsideration within ten (10) full business days. The decision of the Executive Director will be in writing and final. No further protests will be heard by SANDAG.

STANDARD AGREEMENT FOR SERVICES COVER SHEET – RFP ATTACHMENT A

SUBCONSULTANT LIST – RFP ATTACHMENT B

The proposal shall include a complete list of all proposed subconsultants. All subconsultants listed must be provided a meaningful element of work within the defined scope of work. Changes to this Subconsultant List will not be allowed without prior written approval from SANDAG.

All businesses, including prime consultants, claiming MBE/WBE/DBE status must be certified by Caltrans, by another qualified Department of Transportation recipient, or other certifying public agency at the time the proposal is submitted.

PROPOSED CONSULTANTS

Subconsultant	MBE/WBE/DBE	Gender	Ethnicity*	Scope of Work	Approved % of Project Cost
	Certifying Agency				

*Use following numeric designations to denote Ethnicity

- | | | | |
|---|--|--|----------------|
| 1. Asian-Indian
1a India
1b Pakistan
1c Bangladesh | 3. Black

4. Caucasian

5. Hispanic
5a Cuba
5b Dominican Republic
5c Spain
5d Portugal
5e Puerto Rico
5f Mexico
5g Central or South America | 6. Native American
6a American Indian
6b Eskimo
6c Aleut
6d Native Hawaiian

7. Pacific-Islanders
7a Samoa
7b Guam
7c Philippines
7d Northern Marianas
7e U.S. Trust Territories of the Pacific | 8. Other _____ |
|---|--|--|----------------|

**AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN
THE SAN DIEGO ASSOCIATION OF GOVERNMENTS
AND
[CLICK TO INSERT CONSULTANT NAME]**

THIS AGREEMENT shall be effective as of this [Day] day of [Month], [Year], by and between the San Diego Association of Governments (hereinafter referred to as "SANDAG"), 401 B Street, Suite 800, San Diego, California, and [Consultant Name and Address] (hereinafter referred to as "Consultant") in view of the following facts:

RECITALS

The following recitals are a substantive part of this Agreement:

- A. SANDAG is in need of professional services for the following project: Sand Compatibility and Opportunistic Use Program (hereinafter referred to as the "Project").
- B. Consultant represents that [it/he/she] is duly licensed and qualified to provide such services and has the personnel and other resources necessary to accomplish the work within the required time.
- C. The purpose of this Agreement is to establish the terms and conditions for SANDAG to retain Consultant to provide the services described herein.

NOW, THEREFORE, it is agreed as follows:

I. SERVICES

Consultant shall provide SANDAG the services as described in the Scope of Work attached hereto as Exhibit A. Consultant's proposal and SANDAG's request for proposals concerning the Project are hereby incorporated by reference as part of the Scope of Work attached as Exhibit A.

II. AUTHORIZATION

Specific authorization to proceed (Notice to Proceed) with all or a portion of the work described in Exhibit A shall be granted in writing by SANDAG. Consultant shall not proceed with the work unless it is authorized. The Notice to Proceed shall set forth the date of commencement of work. Consultant shall commence work immediately upon receipt of the Notice to Proceed. This Agreement shall terminate on or before [insert date], unless extended by amendment. The consultant is advised that any recommendation for contract award or notice of intent to contract is not binding on SANDAG until the Agreement is fully executed by all authorized parties.

III. PAYMENT

- A. SANDAG shall pay for services in accordance with the Payment Schedule attached hereto as Exhibit B. Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all of the provisions of this Article.
- B. For services rendered pursuant to this Agreement, Consultant shall be paid a total not to exceed \$[Consultant Payment]. This amount shall be known as the "maximum amount of the Agreement."
- C. Said sum shall include all applicable costs such as salaries and wages, overhead, travel, materials and supplies, subcontract costs, and fixed fees or profit. Consultant is expressly put on notice that no employee of SANDAG has authority to authorize, in writing or otherwise, an increase in the maximum amount of this Agreement without SANDAG Executive Director approval.
- D. For the performance of services, Consultant will be paid a fixed fee for each deliverable based on cost per unit of work. SANDAG shall pay Consultant following receipt and approval of deliverables. After approval by SANDAG of deliverables, Consultant shall submit an invoice for payment based upon the portion of total work completed and approved as set forth in Exhibit B, Payment Schedule. SANDAG shall pay the invoices within thirty (30) days of receipt. SANDAG shall retain ten percent (10%) from the amount invoiced until satisfactory completion of all work contracted for as described in Exhibit A.
- E. Upon completion of all deliverables and work tasks to the satisfaction of SANDAG, Consultant shall submit a final invoice showing the cumulative costs incurred by Consultant, not to exceed maximum amount of the Agreement, and the Final Utilization Report (Exhibit G) completed with the appropriate information. Final payment of retained amounts shall be made following Consultant's submittal of all required documentation and completion of the Project. Notwithstanding the foregoing, all payments are subject to the conditions set forth elsewhere in this Agreement or which are otherwise required by law. SANDAG may withhold all payments to Consultant if Consultant fails to comply with the requirements of the Agreement. Payments shall be subject to review for compliance by SANDAG with the requirements of this Agreement, and payment may be withheld if Consultant is not in compliance with the Agreement. Payments shall be subject to an audit upon completion of all services. No other compensation will be paid except for work done under an amended agreement approved pursuant to Article X, "Changes in Work."

IV. TIME OF PERFORMANCE AND NOTICE REGARDING LATE DELIVERY

Time is of the essence in this Agreement and each covenant and term is a condition herein. Consultant shall perform all services in a prompt and timely manner in accordance with the Activity Schedule shown in Exhibit C. In the event Consultant encounters difficulty in meeting the Activity Schedule or anticipates difficulty in complying with the Activity Schedule, the Consultant shall immediately notify the SANDAG Project Manager and shall provide pertinent details, including, the reason(s) for the delay in performance and the date by which Consultant expects to complete performance or make delivery. This notification shall be informational in character only and receipt of it shall not be construed as a waiver by SANDAG of a contract delivery schedule or date, or any

rights or remedies provided by law under this Agreement. Any additional time for performance or delivery must be approved in writing in a document signed by both parties.

V. STANDARD OF CARE

- A. Consultant's services shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. All services shall be performed to SANDAG's satisfaction.
- B. Consultant acknowledges and understands that the data and/or information it collects and/or provides to SANDAG will be relied upon by SANDAG and other persons or entities that are now or will in the future be under contract with SANDAG. Should information provided by Consultant be inaccurate and cause SANDAG to incur damages or additional expenses, SANDAG shall notify Consultant and Consultant shall immediately place its insurance carrier on notice of a potential claim.

VI. ASSIGNMENT AND SUBCONTRACTING

- A. Consultant shall not assign, sublet or transfer (whether by assignment or novation) this Agreement or any rights under or interest in this Agreement without the written consent of SANDAG, which may be withheld for any reason, provided however, that claims for money due to Consultant from SANDAG under this Agreement may be assigned to a bank, trust company or other financial institution without such approval. Notice of such assignment or transfer shall be promptly furnished to SANDAG in writing.
- B. Nothing contained herein shall prevent Consultant from employing independent professional associates, subconsultants and consultants as Consultant may deem appropriate to assist in the performance of services hereunder. The Consultant shall not enter into any agreement to perform subcontracted work in connection with this Agreement without first obtaining SANDAG's written approval as to the scope of work and the subconsultant.
- C. If Consultant subcontracts any of the work to be performed under this Agreement, Consultant shall be as fully responsible to SANDAG for the acts and omissions of Consultant's subconsultant and of the persons employed by the subconsultant as Consultant is for the acts and omissions of persons directly employed by Consultant. Nothing contained in this Agreement shall create any contractual relationship between any subconsultant of Consultant and SANDAG. Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all of the provisions stipulated in this Agreement to be applicable to the subconsultant. Consultant shall bind every subconsultant and every subconsultant of a subconsultant to the terms of this Agreement, unless specifically noted to the contrary in the subcontract in question, approved in writing by SANDAG.

VII. STATUS OF THE CONSULTANT

- A. Consultant shall perform the services provided for within this Agreement as an independent contractor, and not as an employee of SANDAG. Consultant shall be under the control of

SANDAG as to the result to be accomplished and not the means, and shall consult with SANDAG as provided for in the Scope of Work. The payment made to Consultant pursuant to this Agreement shall be the full and complete compensation to which Consultant is entitled. SANDAG shall not make any federal or state tax withholdings on behalf of Consultant. SANDAG shall not be required to pay any workers' compensation insurance on behalf of Consultant. Consultant agrees to indemnify SANDAG for any tax, retirement contribution, social security, overtime payment, or workers' compensation payment which SANDAG may be required to make on behalf of Consultant or any employee of Consultant for work done under this Agreement.

- B. Except as SANDAG may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of SANDAG in any capacity whatsoever, as an agent or otherwise. Contractor shall have no authority, express or implied, to bind SANDAG or its members, agents or employees, to any obligation whatsoever, unless expressly provided in this Agreement.

VIII. INTEGRATION

This Agreement represents the entire understanding of SANDAG and Consultant as to those matters contained in it. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by SANDAG and Consultant.

IX. DELIVERABLES

- A. The term "deliverables" includes, but is not limited to, all original drawings, reports and other documents, including detailed calculations, digital/electronic databases, source code, data sets, analyses, maps, and other work products developed for the Project. Digital or electronic data is required as a deliverable under this Agreement. Consultant must submit deliverables in a format identified by SANDAG as one it can decipher. Documentation and metadata must accompany the data in order for the deliverable to be accepted by SANDAG.
- B. All deliverables including, but not limited to, reports, documents, supporting materials source code, digital or electronic files and databases, and any other deliverables required by the Agreement are the property of SANDAG, whether the work for which they are made be completed or not. In the event this Agreement is terminated, all deliverables shall be delivered within ten (10) days from the date of termination to SANDAG.
- C. Consultant shall have the right to make a copy of the deliverables solely for the purpose of recordkeeping. Consultant may not sell, reuse, or distribute deliverables prepared under this Agreement in any form without SANDAG's express written permission.

X. CHANGES IN WORK

If changes in the work seem merited by Consultant or SANDAG, and informal consultations with the other party indicate that a change is warranted, it shall be processed by SANDAG in the following manner: A letter outlining the changes shall be forwarded to SANDAG by Consultant, with a

statement of estimated changes in fee or time schedule. If SANDAG determines the change is merited, is due to an unexpected circumstance, and was caused through no fault of the Consultant, an amendment to the Agreement may be prepared by SANDAG. SANDAG will not be required to pay for the changes in work unless the amendment is executed by both parties before performance of such services commences. Consultant is expressly put on notice that no employee of SANDAG has authority to authorize, in writing or otherwise, any additional work which would increase the cost of this Agreement without SANDAG Executive Director approval. Such amended agreement shall not render ineffective or invalidate unaffected portions of this Agreement.

XI. PROGRESS REPORTING

It shall be the responsibility of Consultant to advise SANDAG on a [quarterly, monthly, biweekly, or weekly] basis of the progress of its work, expenditures incurred, and information regarding whether the Project is projected to comply with the Activity Schedule and Project budget limits. Consultant shall document the progress and results of work performed under this Agreement to the satisfaction of SANDAG, and if applicable, to the satisfaction of any government agency as directed by SANDAG. This may include progress and final reports, plans, specifications, estimates, or other evidence of attainment of the Agreement objectives.

XII. INSURANCE

- A. Consultant shall procure and maintain during the period of performance of this Agreement, and for 12 months following completion, policies of insurance from insurance companies authorized to do business in the State of California. The policy and certificate(s) of insurance must provide for the following:
1. *Commercial General Liability:* Combined single limit of \$1,000,000 per occurrence and \$2,000,000 general aggregate for personal and bodily injury, including death, and broad form property damage. The certificate of insurance or a policy endorsement must include an acceptable "Waiver of Subrogation" in favor of SANDAG. The certificate of insurance must name SANDAG as an additional insured.
 2. *Automobile liability:* for personal and bodily injury, including death, and property damage in an amount not less than \$1,000,000.
 3. *Professional liability:* (errors and omissions) for negligent acts, errors or omissions of a professional nature in the amount of \$1,000,000 per claim and aggregate. The policy must be a "claims made" policy.
 4. *Workers' compensation and employer's liability:* comply with the laws of the State of California. The certificate of insurance or a policy endorsement must provide an acceptable "Waiver of Subrogation" in favor of SANDAG. The policy must provide for a minimum of \$1,000,000 in employer's liability coverage.
- B. Consultant shall furnish satisfactory proof by one or more certificates (original copies) that it has the foregoing insurance. The certificate(s) shall be attached to this Agreement as Exhibit D. The insurance shall be provided by an acceptable insurance provider, as determined by SANDAG, which satisfies the following minimum requirements:

1. An insurance carrier qualified to do business in California and maintaining an agent for service of process within the state. Such insurance carrier shall maintain a current A.M. Best rating classification of "A-" or better, and a financial size of "\$10 million to \$24 million (Class V) or better," except for State Fund, or
 2. A Lloyd's of London program provided by syndicates of Lloyd's of London and other London insurance carriers, providing all participants are qualified to do business in California and the policy provides for an agent for service of process in California.
- C. Certificates of insurance shall be filed with SANDAG. Consultant is responsible for ensuring that its carrier(s) send SANDAG updated certificates of insurance throughout the term of the Agreement. The general liability and property damage insurance, as well as automobile liability insurance, shall include SANDAG as an additional insureds. Consultant's policies shall be primary insurance as to SANDAG so that any other coverage held by SANDAG shall not contribute to any loss under Consultant's insurance. Said certificates of insurance must contain a provision which states: "Such insurance as is afforded by these policies shall be Primary and Non-contributory to the full limits stated in the declarations, and if SANDAG, its Board of Directors, officers, employees or agents have other valid and collectible insurance for a loss covered by this policy, that other insurance shall be excess only." Each certificate of insurance shall state that the policies may not be canceled without first giving thirty (30) days advance written notice to SANDAG. For purposes of this notice requirement, any material change in the policy prior to its expiration may be considered a cancellation.

XIII. INDEMNITY - HOLD HARMLESS

- A. The Consultant expressly warrants that the work to be performed pursuant to this Agreement shall be performed in accordance with the standards specified in Article V, Standard of Care. Where approval by SANDAG, the Executive Director or other representative of SANDAG is indicated, it is understood to be conceptual approval only and does not relieve the Consultant of responsibility for complying with all laws, codes, industry standards and liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of the Consultant or its subconsultants.
- B. With regard to the Consultant's performance in connection with or incidental to the Project, but excluding its performance of professional services and the indemnification and hold harmless aspects thereto as set forth below, the Consultant agrees to defend, indemnify, protect and hold SANDAG and its agents, officers and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to the Consultant's or its subconsultants' employees, agents or officers, which arise from or are connected with or are caused or claimed to be caused by the negligent, reckless or willful acts or omissions of the Consultant and its subconsultants and their agents, officers or employees, in performing the work or services herein, and all expenses of investigating and defending against same, including attorney fees and costs; provided, however, that the Consultant's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of SANDAG, its agents, officers or employees.

- C. With regard to the Consultant's performance of professional services, the Consultant agrees to defend, indemnify and hold harmless SANDAG, its officers, agents and employees from and against any and all claims, costs, suits and damages, including attorney's fees, arising from the willful misconduct or negligent acts, errors or omissions of the Consultant and/or its subconsultants associated with the Project.

XIV. AUDIT AND INSPECTION OF RECORDS

The Consultant shall maintain complete and accurate records with respect to actual time and allowable costs incurred under this Agreement. All such records shall be maintained on a generally-accepted accounting basis and shall be clearly identified. The Consultant shall provide reasonable access to the representatives of SANDAG, or its designees, including representatives of the applicable government agencies if this Agreement is funded in whole or in part with state or federal funds, to such books and records and any other books, documents, papers or records of the Consultant that are related to this Agreement. SANDAG, the State, the State Auditor, FHWA, FTA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations shall have the right to examine and audit such books and records and to make transcripts or copies from them as necessary. Consultant shall allow inspection of all work data, documents, proceedings, and activities related to this Agreement for a period of five (5) years from the date of final payment under this Agreement. This Article must be included in any subcontract entered into as a result of this Agreement.

XV. LAWS, VENUE AND DISPUTE RESOLUTION

- A. This Agreement shall be interpreted in accordance with the laws of the State of California.
- B. In the event Consultant has a dispute with SANDAG during the performance of this Agreement, Consultant shall continue to perform unless SANDAG informs Consultant in writing to cease performance. Consultant shall submit a statement of the grounds for the dispute including all pertinent dates, names of persons involved, and supporting documentation to SANDAG's Project Manager. The Project Manager and other appropriate SANDAG staff will review the documentation in a timely manner and reply to Consultant within 20 days. Upon receipt of an adverse decision by SANDAG, Consultant may submit a request for reconsideration to SANDAG's Executive Director. The request for reconsideration must be received within ten days from the postmark date of SANDAG's reply. The Executive Director will respond to the request for reconsideration within ten working days. The decision of the Executive Director will be final and in writing.
- C. If Consultant is dissatisfied with the results following exhaustion of the above dispute resolution procedures, Consultant shall make a written request to SANDAG for mediation. SANDAG shall respond to a request for mediation within ten business days. If SANDAG agrees mediation is appropriate, a mutually acceptable mediator shall be selected by the parties and the parties will proceed to mediation of the dispute.
- D. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of San Diego, State of California. In the event of any such litigation between the parties, the prevailing party shall be entitled

to recover all reasonable costs incurred, including reasonable attorneys' fees, as determined by the court.

XVI. TERMINATION OR ABANDONMENT

- A. Upon receipt of notice of termination, Consultant shall immediately cease all services unless the notice indicates otherwise, and notify SANDAG's Project Manager of the status of Consultant's performance.
1. *Termination for Cause:* Except as otherwise provided herein, if the Consultant fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the Consultant violates any of the covenants, conditions, or terms of this Agreement, SANDAG shall have the right to terminate this Agreement by giving at least five (5) days written notice to the Consultant of such termination. In that event, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, deliverables and reports prepared by the Consultant for this Project, whether completed or in process, shall be delivered by Consultant to SANDAG within 10 days and shall be SANDAG property. The Consultant shall not be relieved of liability to SANDAG for damages sustained by SANDAG by virtue of any breach of the Agreement by the Consultant, nor shall SANDAG be liable for any costs other than the fees or portions thereof specified herein.
 2. *Termination for Convenience:* SANDAG may at any time terminate this Agreement for any reason by giving fifteen (15) days written notice of termination. Upon termination, the Consultant will be paid the reasonable value for services actually performed, based upon proration of the payment schedule set forth in this Agreement. All finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, deliverables and reports prepared by the Consultant for this Project, whether completed or in process, shall be delivered by Consultant to SANDAG within 10 days of notice of termination and shall be SANDAG property. SANDAG shall have no other liability to Consultant or its subconsultant(s) in the event of termination for convenience. Under no circumstances shall Consultant be paid an amount in excess of the maximum amount of the Agreement or for profit on unperformed portions of service. In the event of a dispute as to the reasonable value of the services rendered by Consultant, the decision of SANDAG's Executive Director shall be final.
 3. *Termination Settlement Expenses:* Termination settlement expenses shall be reimbursed in accordance with 48 CFR, Federal Regulations System, Chapter 1, Part 31. Notwithstanding the foregoing, subpart 31.205-42(c), concerning initial costs, shall not apply to architectural and engineering contract terminations.

XVII. CONFORMITY TO LEGAL REQUIREMENTS

- A. Consultant shall comply with all Federal, State and local laws and ordinances applicable to this Agreement. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code section 1775 when applicable. Consultant shall cause

all completed deliverables to conform to all applicable requirements of law: federal, state and local.

- B. Consultant shall be aware of the requirements of the Immigration Reform and Control Act of 1986 and shall comply with those requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, consultants, and subconsultants that are included in this Agreement.

XVIII. CONFIDENTIALITY

Consultant shall not use for personal gain or make other improper use of privileged information that is acquired in connection with this Agreement. For purposes of this Agreement "privileged information" includes, but is not limited to, trade secret information, medical records, personnel records, home addresses, and phone numbers of any person, social security numbers, and knowledge of selections of contractors or subcontractors in advance of an official announcement by SANDAG.

XIX. INTELLECTUAL PROPERTY RIGHTS

Consultant agrees that any and all property rights, including intellectual property rights such as copyrights or patents that arise from creation of deliverables or other work product required by this Agreement shall be vested in SANDAG and hereby agrees to relinquish all claims to such property rights in favor of SANDAG.

XX. PROHIBITED INTEREST/COVENANTS AGAINST CONTINGENT FEES

- A. No elected official(s) of SANDAG or any of its member agencies, the State of California or the United States Government shall become directly or indirectly interested in or personally benefit from the financial proceeds of this Agreement or in any part of it. No officer or employee of SANDAG shall become directly or indirectly interested in or benefit from the financial proceeds of this Agreement or any part of it.
- B. Consultant warrants that its firm has not employed, retained, paid, or agreed to pay any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, SANDAG shall have the right to annul this Agreement without liability, or at its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
- C. Certifications on Lobbying are required for this contract. Consultant assures that no federal funds have been paid or will be paid, by or on behalf of Consultant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress in connection with the awarding of this Agreement. Exhibit E to this Agreement, entitled "Certifications On Lobbying," which was

submitted by Consultant at the time its proposal was submitted, is hereby incorporated by reference.

- D. Consultant agrees to comply with the provisions of 31 U.S.C. Section 1352, which prohibit the use of federal funds for lobbying any official or employee of any federal agency, or member or employee of Congress; and require Consultant to disclose any lobbying of any official or employee of any federal agency, or member or employee of Congress in connection with federal assistance. Consultant agrees to comply with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20.

XXI. CONFLICT OF INTEREST

- A. Consultant shall file a Conflict of Interest Statement with SANDAG's Executive Director if it is required by SANDAG's Conflict of Interest Code. Consultant is responsible for determining it is a "Consultant" for purposes of the Political Reform Act and such code, and for compliance with any applicable financial disclosure requirements. Consultant represents that to its knowledge, entry into this Agreement will not result in a conflict of interest prohibited by California Government Code section 1090 for SANDAG's employees or Board of Directors.
- B. Consultant shall not make or participate in making or in any way attempt to use Consultant's position to influence a governmental decision in which Consultant knows or has reason to know Consultant has a financial interest other than the compensation promised by this Agreement. Consultant represents that Consultant has diligently conducted a search and inventory of Consultant's economic interests, as defined in the regulations promulgated by the Fair Political Practices Commission, and has determined that Consultant does not, to the best of Consultant's knowledge, have an economic interest which would conflict with Consultant's duties under this Agreement. Consultant agrees to scrupulously avoid performing services for any person or entity or entering into any contractual or other relationship with any person or entity which might create a conflict with the rendering of services under this Agreement. Consultant will immediately advise the General Counsel of SANDAG if Consultant learns of an economic interest or other prohibited conflict of interest of Consultant's during the term of this Agreement.

XXII. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

- A. In connection with the performance of this Agreement, the Consultant will cooperate with SANDAG in meeting its commitments and goals with regard to equal opportunities for disadvantaged business enterprises (DBEs), including minority- and women-owned business enterprises. It is SANDAG's policy that DBEs shall have an equal opportunity to participate in the performance of contracts.
- B. SANDAG has not established goals for the participation of DBE for this Agreement. The Consultant, however, is responsible for being fully informed of the requirements of Part 26, Title 49 of the Code of Federal Regulations and SANDAG's DBE Program, which are incorporated herein by reference. Consultant is urged to obtain DBE participation should a clearly defined portion of the work become available.

- C. It is SANDAG's policy that certified DBE firms shall have an equal opportunity to participate in performance of contracts financed in whole or in part with federal funds. The Project covered by this Agreement will be financed in whole or in part with federal funds. Therefore, the Consultant shall ensure that certified DBE firms, as defined in 49 CFR Part 26, have an equal opportunity to participate in the performance of this Agreement and shall take all necessary and reasonable steps, as set forth in 49 CFR Part 26, for such assurance. Consultant shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of this Agreement. Consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure to carry out these requirements shall constitute a material breach of this Agreement, which may result in termination of this Agreement or such other remedy as SANDAG deems appropriate.
- D. If DBE participation is obtained, Consultant shall maintain records of all subconsultant agreements entered into with DBE subconsultants and records of materials purchased from DBE suppliers, regardless of tier. Such records shall show each subconsultant's and vendor's name and address and the actual dollars paid to each. Upon completion of the Agreement, a summary of these records shall be prepared, certified correct and submitted on the form entitled "Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" attached as Exhibit G, or its equivalent, by the Consultant or its authorized representative to SANDAG's Project Manager showing total dollars paid to each DBE subconsultant and supplier. Consultant will not receive final payment until this Exhibit is filled in and provided to SANDAG.
- E. If a DBE subconsultant is decertified during the life of the project, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the project, the subconsultant shall notify Consultant in writing with the date of certification. Consultant shall immediately furnish the written documentation to SANDAG's Project Manager. Upon completion of the Agreement, "Disadvantaged Business Enterprise (DBE) Certification Status Change" Form CEM-2403(f) indicating the DBE's existing certification status shall be signed and certified correct by Consultant.
- F. Any DBE firm working as a subconsultant under this Agreement must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing, and supervising the work.
- G. Consultant shall make every reasonable effort to replace a certified DBE firm that is unable to perform the provisions of this Agreement with another certified DBE firm.

[For contracts with prime contractors that will have
subcontractors include the following additional paragraph]

- H. The Consultant shall pay all DBE subconsultants and nonDBE subconsultants for satisfactory performance of their contracts within thirty (30) days from receipt of each subconsultant invoice. Consultant must pay all DBE and nonDBE subconsultants prior to requesting payment from SANDAG for those expenses. Consultant agrees further to release retainage payments to each subconsultant within 10 (ten) days after Consultant receives payment of the retainage from SANDAG. Any delay or postponement of payment from this time frame may occur only

for good cause following written approval from SANDAG. This paragraph applies to both DBE and non-DBE subconsultants.

XXIII. SUCCESSORS OR ASSIGNS

Subject to the provisions of Article XIII, "Indemnity - Hold Harmless," all terms, conditions, and provisions hereof shall inure to and shall bind each of the parties hereto, and each of their respective heirs, executors, administrators, successors, and assigns.

XXIV. NONDISCRIMINATION

- A. Consultants doing business with SANDAG must be equal opportunity employers who achieve or attempt to achieve parity in the representation of women and minorities in their work force.
- B. The Consultant shall ensure equal employment opportunity for all persons. Consultant and its subconsultants shall not discriminate against any employee or applicant for employment because of race, color, religion, creed, sex, sexual orientation, national origin, ancestry, age, medical condition, physical or mental disability, Vietnam-era veteran or special disabled veteran status, marital status or citizenship, within the limits imposed by law. These principles are to be applied by the Consultant in all employment practices, including recruiting, hiring, transfers, promotions, training, compensation, benefits, layoffs, and terminations.
- C. During the performance of this Agreement, Consultant agrees to comply with all the requirements imposed by Title VI and Title VII of the Civil Rights Act of 1964, as amended, and the regulations issued thereunder (Executive Order 11246), the California Fair Employment Practices Act, the Americans with Disabilities Act of 1990, and any other applicable federal and state laws and regulations subsequently enacted.

XXV. INCORPORATION OF FEDERAL/STATE GUIDELINES

- A. All relevant federal and state grant provisions and guidelines, as presently written or as changed during the life of this Agreement, bearing on this Agreement, are hereby wholly incorporated by reference herein and made a part of this Agreement and take precedence over any inconsistent terms of this Agreement. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.
- B. Specific guidelines shall be those prescribed by "Federal Transit Administration Master Agreement" (Form FTA-MA) 49 CFR Part 18, and Federal Transit Administration (FTA) Circular 4220.1E, "Third Party Contracting Requirements" and OMB Circular A-102 "Uniform Requirements for Grants and Cooperative Agreements with State and Local Governments."

XXVI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

- A. Debarment and Suspension certification is required for all procurements exceeding \$25,000. The Federal Transit Administration (FTA) shall be informed of any certification exceptions. Exhibit F to this Agreement, entitled "Certifications Regarding Debarment, Suspension, and Other Matters," which was submitted by Consultant at the time its proposal was submitted, is hereby incorporated by reference.
- B. Consultant certifies, to the best of its knowledge and belief, that Consultant and its principals:
1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 2. Have not within a three-year period preceding this proposal or Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph B above; and
 4. Have not within a three-year period preceding this proposal or Agreement had one or more public transactions terminated for cause or default.
- C. Should Consultant be unable to certify to any of the statements above, Consultant shall attach an explanation to this Agreement.

XXVII. COST PRINCIPLES

Consultant agrees that Contract Cost Principles and Procedures, Federal Acquisition Regulations in Title 48, Part 31 et seq., of the Code of Federal Regulations, govern allowable elements of cost under this Agreement. Consultant also agrees to comply with Federal procedures in accordance with 49 CFR, Part 18, Uniform Requirements for Grants and Cooperative Agreements with State and Local Governments. Any costs for which payment has been made to Consultant that are later determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, are subject to repayment by Consultant to SANDAG. Any subcontract, entered into as a result of this contract, shall contain all the provisions of this Article.

XXVIII. EQUIPMENT PURCHASES

- A. Prior authorization in writing by the Project Manager shall be required before the Consultant enters into any non-budgeted purchase order or subcontract exceeding \$500 for supplies, equipment, or consultant services. If the non-budgeted purpose will cause the Project budget to exceed the Maximum Amount of the Agreement, then prior approval from SANDAG's Executive Director is also required. The Consultant shall provide an evaluation of the necessity or desirability of incurring such costs. For purchase of any item, service or consulting work not covered in the Consultant's Cost Proposal and exceeding \$500, with prior authorization by the Project Manager, three competitive quotations must be submitted with the request or the absence of bidding must be adequately justified.
- B. The Consultant shall maintain an inventory record for each piece of non-expendable equipment purchased or built with funds provided under the terms of this Agreement. The inventory record of each piece of such equipment shall include the date acquired, total cost, serial number, model identification (on purchased equipment), and any other information or description necessary to identify said equipment. Non-expendable equipment so inventoried are those items of equipment that have a normal life expectancy of one year or more and an approximate unit price of \$5,000 or more. In addition, theft-sensitive items of equipment costing less than \$5,000 shall be inventoried. A copy of the inventory record must be submitted to SANDAG on request by SANDAG.
- C. At the conclusion of the Agreement or if the Agreement is terminated, the Consultant may either keep the equipment and credit SANDAG in an amount equal to its fair market value or sell such equipment at the best price obtainable, at a public or private sale, in accordance with established procedures, and credit SANDAG in an amount equal to the sales price. If the Consultant elects to keep the equipment, fair market value shall be determined, at the Consultant's expense, on the basis of a competent, independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to SANDAG and Consultant. If it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by SANDAG.
- D. CFR 49, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000, is credited to the project.
- E. Any subcontract entered into as a result of this Agreement, shall contain all the provisions of this Article.

XXIX. PRE-AWARD AUDITS

Consultant was not required to undergo a pre-award audit, however, circumstances may change that will result in the need for an audit at some later stage. Accordingly, Consultant acknowledges that he/she/it may be required to undergo an audit by the Federal Highway Administration, or Caltrans acting on its behalf, or by a Certified Public Accountant selected by SANDAG, and Consultant hereby agrees to fully cooperate if such an audit is requested.

Consultant Name: _____ Project Name: _____

XXX. ORDER OF PRECEDENCE

SANDAG's Request for Proposals (RFP) and Consultant's proposal concerning the Project are hereby incorporated by reference except to the extent they may conflict with the terms of the Agreement. In the event of conflicting provisions, the following order of precedence will apply: 1) the Agreement; 2) the RFP; 3) Consultant's proposal.

XXXI. ADMINISTRATION

Consultant proposes to assign [name of person] as its Project Manager to provide supervision and have overall responsibility for this Agreement for Consultant. The Project Manager shall not be removed from the project or reassigned without prior approval of SANDAG. Consultant must obtain approval from SANDAG in writing before assigning a new project manager to the Project. No subcontracting of these professional services shall be made without prior approval of SANDAG.

XXXII. HEADINGS

Article headings in this Agreement shall not be used to alter the plain meaning of the text in this Agreement.

XXXIII. NOTICE

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, registered or certified, postage prepaid, addressed to:

San Diego Association of Governments
401 B Street, Suite 800
San Diego, CA 92101
Attn: Rod Rundle, Project Manager

Consultant:

[Consultant Name]

[Consultant Street Address]

[City, State, Zip]

Attn: [Consultant Project Manager]

and shall be effective upon receipt thereof.

XXXIV. PRESERVATION OF AGREEMENT

Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall be severable and enforceable.

XXXV. SIGNATURES

The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

Consultant Name: _____ Project Name: _____

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date written above.

SAN DIEGO ASSOCIATION
OF GOVERNMENTS

[CONSULTANT]

GARY L. GALLEGOS
Executive Director

[Consultant Representative]
[Consultant Representative Title]

APPROVED AS TO SUFFICIENCY
OF FORM AND LEGALITY:

Consultant Federal Tax Number:
[Consultant Federal Tax Number]

Office of General Counsel

Consultant Name: _____ Project Name: _____

Exhibit A
SCOPE OF WORK

Consultant Name: _____ Project Name: _____

Exhibit B

PAYMENT SCHEDULE

Consultant Name: _____ Project Name: _____

Exhibit C

ACTIVITY SCHEDULE

Consultant Name: _____ Project Name: _____

Exhibit D

**CERTIFICATES OF INSURANCE
and
ADDITIONAL INSURED ENDORSEMENTS**

The certificates must be provided by the Consultant before the contract is signed.

Exhibit E

CERTIFICATIONS ON LOBBYING

Name of Applicant: _____

Name of Authorized Representative: _____

Relationship of Authorized Representative: _____

An Applicant that submits, or intends to submit this fiscal year, an application for U.S. DOT assistance exceeding \$100,000 must provide the following certification. U.S. DOT may not provide federal assistance for an application exceeding \$100,000 until the Applicant provides certification of the following by signing the signature page at the end of this document.

In accordance with U.S. DOT regulations, "New Restrictions on Lobbying," at 49 CFR 20.110, 49 CFR Part 19, Appendix A, and the Lobbying Disclosure Act of 1995, for each application for federal assistance exceeding \$100,000, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that:

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of the Applicant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal grant or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Applicant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions (as amended by "Government Wide Guidance for New Restrictions on Lobbying" 61 Fed. Reg. 1413 (1/19/96)).
- C. The Applicant shall require that the language of this certification be included in the award documents for each subaward at any tiers (including subcontracts, subgrants, sub-agreements, and contracts under grants and cooperative agreements financed with U.S. DOT assistance) and that each sub-recipient shall certify and disclose accordingly.

The Applicant understands that: (1) This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into; (2) Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C.

Consultant Name: _____ Project Name: _____

§1352 (as amended by the Lobbying Disclosure Act of 1995); and (3) Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

In signing this document, I declare under the penalty of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant, are true and correct. In addition, Applicant understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

Date: _____

Authorized Representative of Applicant

Consultant Name: _____ Project Name: _____

Exhibit F

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

Name of Applicant: _____

Name of Authorized Representative: _____

Relationship of Authorized Representative: _____

In accordance with the provisions of U.S. Department of Transportation (U.S. DOT) regulations on Government-wide Debarment and Suspension (Non procurement) at 49 CFR 29.510, the Applicant (Participant) agrees as follows:

- A. By signing and submitting this certification, the Participant is providing the certification set out below.
- B. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the Participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- C. The Participant shall provide immediate written notice to the person to which this certification is submitted if at any time the Participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
- D. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact SANDAG for assistance in obtaining a copy of those regulations.
- E. The Participant agrees by submitting its proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by SANDAG.
- F. Participant further agrees by submitting this proposal that it will include this Article in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Consultant Name: _____ Project Name: _____

- G. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
- H. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- I. Except for transactions authorized under paragraph E of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- J. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions
1. The prospective lower tier participant certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
 2. Where Participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to its proposal.

In signing this document, I declare under the penalty of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Participant are true and correct.

Date: _____

Authorized Representative of Applicant